

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ROCHESTER LABORERS )  
PENSION FUND, individually )  
and on behalf of all others similarly )  
situated, )

Plaintiff, )

vs. )

MONSANTO COMPANY, et al., )

Defendants. )

Case No. 4:10CV1380 CDP

**MEMORANDUM AND ORDER**

This matter is before me on motions for appointment of lead plaintiff and lead counsel. Although several parties initially moved for appointment of lead plaintiff and lead counsel, after further briefing all parties now agree that the Arkansas Teacher Retirement System should be appointed lead plaintiff and that Kaplan Fox & Kilsheimer LLP should be appointed lead counsel.

When Congress enacted the Private Securities Litigation Reform Act of 1995 (PSLRA), it “sought to create mechanisms to ensure the protection of class members’ interests in securities litigation that was widely perceived as being lawyer-instituted and lawyer-driven.” In re BankAmerica Corp. Securities Litigation, 350 F.3d 747, 751 (8th Cir. 2003). To effectuate this goal, the PSLRA

requires “district courts to appoint a lead plaintiff or lead plaintiff group to represent aggrieved shareholders and requir[es] these lead plaintiffs to select counsel.” Id. (citing 15 U.S.C. §§ 78u-4(a)(3)(B)(i) and 78u-4(a)(3)(B)(v)). To ensure that the litigation is driven by the interests of class members rather than those of class counsel, the PSLRA directs the Court to appoint as lead plaintiff the member or members of the purported class “that the court determines to be the most capable of adequately representing the interests of the class members.” See 15 U.S.C. §§ 78u-4(a)(1) and (a)(3)(B)(i). According to the statute, that class member has either filed the complaint or filed a motion for appointment as lead plaintiff, has the largest financial interest in the relief sought by class, and otherwise satisfies the requirements of Fed. R. Civ. P. 23. See 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). The Arkansas Teacher Retirement System (ATRS) satisfies these requirements.

Although ATRS did not file the complaint, it timely filed a motion for appointment as lead plaintiff. Additionally, all parties agree that ATRS alleges the largest financial loss, approximately \$5.8 million dollars, in this securities class action lawsuit. In this regard, ATRS is the type of large, institutional lead plaintiff envisioned by Congress when the PSLRA was enacted. See H.R. Conf. Rep. No. 104-369, at 34 (1995). Finally, the Court has reviewed ATRS’s motion papers and


finds that Fed. R. Civ. P. 23 is satisfied by the appointment of ATRS as lead plaintiff. See Reese v. Bahash, 248 F.R.D. 58, 61-62 (D.D.C. Feb. 11, 2008) (presumptive lead plaintiff need only make preliminary showing that it satisfies typicality and adequacy requirements of Rule 23); Kaplan v. Gelfond, 240 F.R.D. 88, 94 (S.D.N.Y. Jan. 18, 2007) (adequacy requirement satisfied when there is no antagonism between the interests of the proposed lead plaintiff and other members of the class, and proposed lead plaintiff has sufficient stake in outcome to ensure vigorous advocacy); In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 291 (2d Cir. 1992) (typicality requirement satisfied when each class member makes sufficient legal arguments to prove defendant's liability).

The PSLRA states that “the most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). ATRS seeks the approval of the law firm of Kaplan Fox & Kilsheimer LLP as lead counsel. Upon review of the firm resume, and as all parties agree, it appears that Kaplan Fox has significant experience litigating securities class actions and possesses ample resources to manage the class litigation and protect the interests of the class. Lead plaintiff is reminded of its obligation to timely file a consolidated complaint in accordance with the August 23, 2010 Joint Scheduling Order.

Accordingly,

**IT IS HEREBY ORDERED** that the motion for appointment as lead plaintiff and for appointment of lead counsel [#31] is granted, and Arkansas Teacher Retirement System is appointed lead plaintiff, and Kaplan Fox & Kilsheimer LLP is appointed lead counsel .

**IT IS FURTHER ORDERED** that all other pending motions [#27, #30, #33] are denied.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 1st day of November, 2010.